

MOTION SEEKING EMERGENCY RELIEF1. HIGH DESERT STATE PRISON2. PO BOX 6503. INDIAN SPRINGS, NV. 890704. JOSEPH MIZZONI #68549

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DISTRICT OF NEVADA	
BY: <i>[Signature]</i>	DEPUTY

6. IN THE UNITED STATES DISTRICT COURT7. FOR THE DISTRICT OF NEVADA9. JOSEPH MIZZONI10. PlaintiffCASE # 3:15-CV-0049AND # 3:15-CV-00313-MMD-VPC12. VS

MOTION SEEKING PERMISSION TO
RECEIVE EMERGENCY INTUNCTION
FOR RELIEF UNDER FRCP 60(b)
AND JUDICIAL NOTICE

14. STATE OF NEVADA ex. rel.15. Defendants

17. Comes Now; Plaintiff Joseph Mizzoni #68549 PRO-SE
 18. for the above Case # 3:15-CV-0049 and Counter Excessive Force §1983
 19. Case # 3:15-CV-00313-MMD-VPC, and Plaintiff Respectfully is seeking
 20. the above motion on new evidence FRCP 60(b) on his §1983 Civil
 21. Rights Complaint Pursuant to 42 USC §1983.

I.

STATEMENT OF FACTS IN SUPPORT I

1. I am the Plaintiff Joseph Mizzoni in PRO-SE
2. and am requesting to file a motion for Emergency Injunction
3. Relief on a FRCP 60(b) new evidence.
4. See; Hains v. Kerner, 404 U.S. 59, 520 (1972) (Allegations of a PRO-SE
5. complaint are held to less stringent standards than formal pleadings
6. drafted by lawyers.
- 7.
8. (FACT 1.) Plaintiff filed his Complaint §1983 on the 10th day of
9. September, 2015. Case # 3:15-CV-00499 for his disciplinary by (NDOC).
- 10.
11. (FACT 2.) Plaintiff filed a §1983 Excessive Force a counter claim
12. of separate doings on the 8th day of June, 2015, on Case #
13. 3:15-CV-00313-MMD-VPC.
- 14.
15. (FACT 3.) Plaintiff received a "LIMITED NOTICE OF APPEARANCE" on
16. Case # 3:15-CV-00313-MMD-VPC Excessive Force Claim stating the
17. Defendant's Christopher Smith (identified as C. Smith in Plaintiff's Complaint)
18. Robert Ardinger and Sergeant Ms. Robertson, on MIZZONI VS. C/O ALLISON et al.
- 19.
20. (FACT 4.) Fact C. Smith is the charging Officer on Plaintiff's NDOC Disciplinary
21. Charges of Assault, Battery, and Cussing and stated Plaintiff hit him in a
22. scuffle in his temple with a closed fist and wrote all the rest of
23. the disciplinary hearing on 5-7-15 and Plaintiff was found guilty and given
24. (2) Years Disciplinary Segregation, Stat loss, Restitution, Criminal Sectioned by Ab
25. Referral, Loss of State (2) years, Loss of Visits contact (2) years, and Loss of appliances,
26. and sent to a Maximum Security State City Prison, and loss of all amenities,
27. privileges, liberty interest compared to (GP) inmates situated at Northern
- 28.

I.

STATEMENT OF FACTS IN SUPPORT I

1. Nevada Correctional Center on a medium prison yard. And because of
 2. C. Smith's C/O's lie about me hitting him and charging and convicting
 3. me of this Disciplinary Segregation I suffered a great deal as
 4. said but what's more disturbing is his Co-Defendants on case #
 5. 3:15-cv-00313-MMD-VPC beat me and caused me severe permanent
 6. injuries and scarring to my body, and further conspired with all the
 7. Defendants of that case and used false pictures of C. Smith's C/O's face
 8. and a hand with a superficial cut on the top right knuckle bleeding
 9. to say I did this serious criminal offense, and I never hit him
 10. or any one, and all Defendants have made me do 4 years of DIS
 11. already illegally and unjustly, having me worry emotionally, physically,
 12. mentally, spiritually to all of the sanctions especially the fact of
 13. getting another Felony on my record which would give me a
 14. life sentence for Habitually Criminal. They all committed perjury, obstruction
 15. of justice, false write up and criminal Act, False Arrest, Milliken Prosecution,
 16. Outrages Government Conduct, Conspiracy to commit murder, assault, battery,
 17. and non-medical treatment to those injuries by lying and covering all
 18. case # 3:15-cv-00313-MMD-VPC and this case # 3:15-cv-00499. And most
 19. recently Plaintiff ask the Case Worker Mr Smith at High Desert State Prison
 20. if Plaintiff could at least get put on Administration Segregation until pending
 21. the outcome of the Excessive Force claim because by the (3) Defendants
 22. entering a "LIMITED NOTICE OF APPEARANCE" on case # 3:15-cv-00313-MMD-VPC
 23. dated the 15th day of January, 2016 Doc #7, tells this Court and that Court
 24. case related that they are admitting guilt in order to settle out of Court
 25. and each had a personal and official involvement by C. Smith writing DIS Report and
 26. lying; Mr. Ardingpe I believe is who did most of the excessive physical force to
 27. Plaintiff's head, stomach, knee areas; Ms Robertson taking hard held video and pictures
 28. to send to the T6 and Disciplinary Officer to all convict me on it.

STATEMENT OF FACTS IN SUPPORT I

1. And NDOC Administration at NINCC PRISON and Director Office Assistant and
2. Directors conspiring, allowing, and ordering the Officers to give Plaintiff this
3. Disiplinary 5-1-15 for 3-28-15. Today Mr Smith the caseworker tells me
4. I talked to the Assistant Warden and he said about you coming off
5. D/S "Fuck NO." This Caseworker tells me 4 weeks ago his policy is do 1 year
6. of the 2 year sentence he puts you back on (GP) or (Add Seg), then two
7. weeks go by I asked him about it, he then tells me, "I am going to
8. wait 2 more weeks, so today 2 weeks go by he said the same. All this
9. is further retaliation on top of retaliation already knowing I did nothing
10. written on this Disiplinary Report.
11. See; *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert denied 442, U.S.
12. 941 (1979). A plaintiff can establish the necessary causal connection for
13. supervisory liability by alleging that the defendant "set in motion
14. a series of acts by others" or "knowingly refused to terminate a
15. series of acts by others, which the supervisor knew or reasonably
16. should have known would cause others to inflict a constitutional injury."
17. *Starr v. Baca*, 652 F.3d 1207-08 (9th Cir. 2011) (internal quotations original
18. alterations and citations omitted). Thus, "[a] supervisor can be liable in his
19. individual capacity for his own culpable action or inaction in the training,
20. supervision, or control of his subordinates; for his acquiescence in the constitutional
21. deprivation; or for conduct that showed a reckless or callous indifference to
22. the rights of others." Id. at 1208 (quoting *Watkins v. City of Oakland*, 145 F.3d
23. 1087, 1093 (9th Cir. 1998); see also *Larez v. City of Los Angeles*, 946 F.2d 630,
24. 645. (9th Cir. 1991).
25. See; *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005)
26. Plaintiff showed retaliation and some evidence exercising his constitutional
27. rights by stating he quit his porter job on this complaint and for that
- 28.

I.

STATEMENT OF FACTS IN SUPPORT P

1. and while he has been in D/S C/O's are using laser equipment ran
2. in to my cells from MNC, Ely and New High Desert to hit
3. my vital areas of heart, neck, stomach, chest, private areas and murder
4. to then bringing above cells houses in the main Air Outtake Duct
5. through my vents in cells to maim me by blinding me, maim my voice,
6. heart attack or seizure, retard me, make me a paraplegic or cripple me
7. by this equipment and a hidden camera in cells with audio interrogations
8. of this and offer threats to make a deal or else and even death threats.
9. Also chemicals sprayed: bug spray, pepper spray, Acid tone, Acids, Deodorants and
10. sprayed through my vents in cell from there posted areas of Units why
11. these administration orders, allows it and participates in it to succeed and
12. answered on a grievance that Staff can use Camas on me and Integrate
13. me just recently. See; Vance v. Barrett, 345 F.3d 1083, 1093 (9th Cir 2003).
14. See; Valendingham v. Bojorguez, 866 F.2d 1135, 1138-39 (9th Cir 1989)
15. (Finding sufficient evidence) Timing of events surrounding the alleged
16. retaliation may constitute ~~and~~ Circumstantial evidence of retaliatory Intent.
17. Plaintiff shows this because he was threaten to be transfer to max prison
18. and was as soon as he filed complaints of the above abuse in cells.
19. See; Gomez v. Vernon, 255 F.3d 1118, 1127-28 (9th Cir, 2001).
20. See; Dewalt v Carter 224 F.3d 607, 617-18 (7th Cir 2000) (Ennoble may challenge
21. a prison disciplinary under §1983 provided the punishment he received did
22. not effect the length of his incarceration)
23. See; Black v. Lane, 22 F.3d 1395 (7th Cir 1994) Also See; Cam v. Lane, 857
24. F.2d 1138 (7th Cir, 1988)
25. And See; Smith v. Rowe, 761 F.2d 360 (7th Cir 1985) Found inmate was
26. awarded \$80,770 for being unjustly placed into segregation (22 months.)
27. Under FRCP 60(b) new evidence of Defendants settling out of Court to avoid prosecution
- 1 of these actions in the disciplinary. -4-

II.CONCLUSION

1. WHEREFORE, Because Defendants said in this request lied
 2. and are willing to settle the present case # 3:15-cv-00313-mmd-vrc
 3. for excessive force out of court then Plaintiff respectfully ask that
 4. his disciplinary be expunged/dismissed and Emergency Injunction Relief
 5. of this Motion to order (NOC) to release Plaintiff from Disciplinary
 6. Segregation and put plaintiff on at a minimum Administrative Segregation
 7. and long term when he gets his eye surgery done to place him at
 8. his medium yard and give him his civilities, privileges, liberties to that,
 9. and if not to remove plaintiff from custody to release or out
 10. of state for his safety and retaliations.

RESPECTFULLY SUBMITTED

this 21st day of February, 2016

BY: Joseph M.
 JOSEPH MEZZONE
 #68549

III.AFFIDAVITS OF JOSEPH MIZZONI #68549 IN PRO-SE

STATE OF NEVADA)

: ss

CLARK COUNTY)

(1) Plaintiff sworn in support of the Motion duly and sworn says;

(2) Plaintiff in Prose Joseph Mizioni #68549 in support of this Affidavit here for a "MOTION SEEKING PERMISSION TO RECEIVE EMERGENCY INJUNCTION FOR RELIEF UNDER FRPC 60(b) ANDJUDICIAL NOTICE" IN THE US DIST. COURT OF NEV. FOR

THE DIST OF NEVADA and does so for his §1983 Civil Rights

Complaint case 3:15-CV-0049 in a present to the proceedings of

Case # 3:15-CV-00317 MMD-VPC; and in a truthful manner under

sworn affidavit combined in order to state a claim of this Emergency

Injunction Relief.

RESPECTFULLY SUBMITTED

this 21st day of February 2016BY: Joseph Mizioni
JOSEPH MIZZONI
#68549

IV.CERTIFICATE OF SERVICE BY MAIL

I, Joseph Mizzoni #68549, hereby certify pursuant to 28 USC § 1746 that on this 24 day of February 2016 I mailed a true correct copy of the foregoing "MOTION SEEKING PERMISSION TO RECEIVE EMERGENCY INJUNCTION FOR RELIEF UNDER FRCP 60(b) AND JUDICIAL NOTICE" for case # 3:15-cv-0049 and the adjacent case # 3:15-00313-MMD-VRC by giving same to prison guard officials and at the High Desert State Prison to deposit in the U.S. Mail Brass Slip # sealed and postage prepaid, and addressed to:

(1) CLERK, US DIST COURT

(2) OFFICE OF ATTORNEY GEN, NEV

DISTRICT OF NEVADA

100 Carson Street

400 S. Virginia Street, Room # 301

Carson City, NV. 89701-4717

Reno, NV 89501

(3) Plaintiff Address

Joseph Mizzoni #68549

H.D.S.P

PO Box 650

Indian Springs, NV 89070

RESPECTFULLY SUBMITTEDthis 24 day of February, 2016

By: Joseph Mizzoni
JOSEPH MIZZONI
#68549